

January 27, 2012

Tom Landwehr, Commissioner  
Minnesota Department of Natural Resources  
500 Lafayette Road  
St. Paul, MN 55155

**RE: *In the Matter of Appeal by James DeCent of a Citation for Unlawful Possession of a Firearm*; OAH Docket No: 7-2000-22491-2**

Dear Commissioner Landwehr:

A Prehearing Conference in this matter was conducted by telephone on January 17 and 20, 2012, involving Administrative Law Judge (ALJ) Richard C. Luis, James DeCent (Appellant) and Minnesota Department of Natural Resources (DNR) Conservation Officer (CO) Greg Verkuilen.

At the conclusion of the Prehearing Conference, Officer Verkuilen and Mr. DeCent decided that they would stand on their statements made during the Prehearing Conference, and that a formal evidentiary hearing would not be necessary. Therefore, the Administrative Law Judge issues this Recommendation based on the evidence presented at the Prehearing Conference, and the record closed January 20, 2012.

On November 5, 2011, the first day of firearm deer hunting season, Officer Verkuilen arrested one Brett Stimac, whom he observed situated in a deer stand near where molasses and sugar beet pulp had been placed as bait for deer. Mr. Stimac admitted that he was hunting deer, that the deer stand belonged to him, and that he had placed molasses and sugar beet pulp on the scene to set bait to attract deer.

Officer Verkuilen seized the 30.06 rifle and scope that was in Mr. Stimac's possession, and presented Stimac with a receipt for the property. Verkuilen also issued a Citation for the offense of hunting deer over bait, in violation of Minn. Stat. §97B.328. Mr. Stimac is scheduled to appear in Crow Wing County District Court for the deer-baiting and felon in possession of a firearm charges on February 12, 2012.

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At the time of the arrest described above, Mr. Stimac informed Officer Verkuilen that the firearm did not belong to him, but to his “girlfriend’s ex-boyfriend”, whose name was Jim. On or about November 20, 2011, Mr. DeCent contacted Officer Verkuilen by telephone, informed him that the firearm seized from Brett Stimac belonged to him, and requested that the rifle be returned.

Mr. DeCent informed Officer Verkuilen that the rifle had been his for approximately 30 years, having been presented to him by his father (who was not a hunter) after the father won it in a raffle. Mr. DeCent explained that he had loaned the firearm to his “ex-wife”, and that it was to be used by their 10-year-old son the first day of deer season. Instead, Mr. DeCent’s ex-wife allowed her current boyfriend, Brett Stimac, to borrow the rifle. Mr. DeCent explained to Officer Verkuilen that he had no knowledge that the possession of the rifle had passed to Brett Stimac.

Officer Verkuilen explained to Mr. DeCent that, in the interim since he arrested Mr. Stimac, he had learned that Mr. Stimac was a convicted felon, contrary to what Stimac had said when he was apprehended. Mr. DeCent responded that he was unaware Mr. Stimac was a felon. Officer Verkuilen indicated that he may have been able to return the rifle to Mr. DeCent over the deer baiting offense, but was unable to exercise discretion to return the rifle because of the added complication that it had been in the possession of a convicted felon.

Mr. DeCent filed an Appeal in writing on December 19, 2011, and the matter was subsequently referred to the Office of Administrative Hearings.

**IT IS RECOMMENDED** that the 30.06 rifle and scope seized from Brett Stimac, a convicted felon, on November 6, 2011, be **FORFEITED** to the Department, and not returned to its former owner, James DeCent.

The Administrative Law Judge agrees with Officer Verkuilen that Mr. DeCent’s version of the facts surrounding this situation has problems. First, Mr. DeCent has not established that the rifle was his (he is attempting to obtain verification from the entity that operated the raffle). Also, it is difficult to reconcile that Mr. DeCent loaned the rifle to his ex-wife for the use of their son, so that his son could use it on opening day, and then told Officer Verkuilen he had no idea that possession of the rifle had been passed to Mr. Stimac. When opening day arrived, according to Mr. DeCent, the son had changed his mind about his original hunting plans and decided to hunt with his father.

Since his son was hunting with his father with a different weapon than the 30.06 rifle his father had loaned to him for that purpose, Mr. DeCent assumed his ex-wife had kept the 30.06. Mr. DeCent knew at that point, or should have known, that the rifle

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could be transferred to someone else. In that circumstance, a firearm owner assumes the risk that the property could end up in the hands of a felon.

Under Minn. Stat. §609.165 and 624.713, and 18 U.S.C. 922 (g) (9), it is illegal for a firearm to be in the possession of a felon, and the appropriate civil remedy is seizure of the firearm under Minn. Stat. § 97A.223. The fact that the owner of the firearm did not know it would be transferred to the possession of a felon is not material under the law.

Very truly yours,

/s/ Richard C. Luis

RICHARD C. LUIS  
Administrative Law Judge

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RCL/jld/mo

cc: James Louis DeCent  
Conservation Officer Greg Verkuilen  
Colonel James E. Konrad  
Pat Holt